APR 22 1954
HAROLD B. WILLEY, C

Supreme Court of the United States

OCTOBER TERM, 1953

No. 635

CAMILO WESTON LEYRA,

Petitioner,

v.

WILFRED L. DENNO, Warden of Sing Sing Prison, Ossining, New York.

PETITIONER'S REPLY BRIEF

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CAMILO WESTON LEYRA, Petitioner, v. WILFRED L. DENNO, Warden of Sing Sing Prison, Ossining, New York.	No. 635

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1. Perhaps the essential fallacy of respondent's brief may be demonstrated by reference to the statement (p. 37) that he has shown to be "without basis of fact" petitioner's contention that the Helfand contact "affected" the subsequent confessions. That flies in the face of the first decision of the state Court of Appeals and of the Trial Court's charge that the burden was on the state to show "beyond a reasonable doubt" that this was not so. And we maintain that the state wholly failed to meet that burden.

Likewise fallacious is the contention (p. 40) that petitioner relies on "closeness in point of time", at least so far as Meenahan is concerned. For petitioner has consistently maintained that the Helfand-Meenahan episode was indivisible.

2. It is, indeed, remarkable that respondent should now repudiate the position consistently taken by the prosecutor heretofore, with respect to the issue of inducement, by purporting to have discovered for the first time that the state Court of Appeals had not ruled there was inducement as matter of law (Brief, pp. 43, 44)! That was plain to any-

one who could read. And there is nothing to support respondent's suggestion (p. 44) that the trial court thought otherwise. On the other hand, the trial court was at liberty to conclude that, from the facts adduced at the trial, there was inducement as matter of law. It is thus improper to say that this charge was "unauthorized" (Brief, p. 65). It should be noted, however, that even if respondent now should have the right to disregard the theory on which the case was tried, then the conviction nevertheless cannot stand. For, on this view of the case, the jury should have been instructed that it might find inducement but that if it did there could be no verdict of murder in the first degree.

3. We see nothing to be gained by discussing respondent's analysis of Judge Fuld's opinion (Brief, pp. 41-43). It is of no consequence that Judge Fuld did not deal with the issue of coercion. Our case does not rest upon the opinion of any one judge, but on the undisputed facts and the unquestioned doctrines laid down by this Court.

But we cannot let pass the suggestion (pp. 41, 42) that a conviction based on a confession obtained as the result of a promise of leniency raises no federal issue. We have established the contrary in our main brief (pp. 10, 11).

4. We find considerable difficulty in determining the basis on which respondent seeks to sustain the conviction. At times (Brief, pp. 53, 65) he stresses the refusal of this Court to review instructions given by a trial court, citing *Lyons* v. *Oklahoma*, 322 U. S. 596. But no such issue exists here. Petitioner is not complaining of the language used by the trial court in its charge, but of its having submitted to the jury issues which should have been decided in petitioner's favor as matter of law. Indeed, petitioner readily concedes that, on the assumption that issues of fact did exist, the charge presented them to the jury in as fair a way as possible.

At other times respondent (pp. 48, 58) stresses the unwillingness of this Court to review contested issues of fact,

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citing *Lisenba* v. *California*, 314 U. S. 213, and *Stein* v. *New York*, 346 U. S. 156. But again, no such question exists here. With respect to what happened between petitioner and the various persons who questioned him, including Helfand, everything was recorded, nothing disputed.

In both the cases cited by respondents it had been contended that the confessions resulted from physical violence and in both cases the accused officers denied that there had been any violence. The jury in each case believed them. Therefore, this Court held the confessions admissible. Here there is no dispute about the facts. So neither case cited has any resemblance whatever to the case at bar.

Respondent's statement (p. 60) that the jury in the *Stein* case had found "a complete absence of 'carry-over'" is entirely without foundation. For there were no successive confessions involved in that case, no question of carry-over. The attack was on the original confession because of third degree methods; it failed for lack of proof. The court's charge in that case (see 346 U. S. 173, n. 17) made no reference to carry-over.

Respondent's reliance on *Lyons* v. *Oklahoma*, supra (Brief, pp. 51 ff), is certainly misplaced. For the time element there involved was entirely different from the situation here. There the tainted confession had been made in the early hours of the morning and the first of the confessions received in evidence was obtained about 18 hours later! Here there was no time interval at all between the Helfand and Meenahan statements and no real interruption whatever between those and the confessions to the prosecutors. For throughout the evening petitioner was kept in the one room—there was really but one continuous confession. Clearly applicable here is the language of the Court quoted in our main brief (p. 19).

Nor does *Stroble* v. *California*, 343 U. S. 181 (Brief, pp. 55 ff) help respondent. For, as appears from the part of this Court's opinion quoted by respondent (p. 57), the

beating in the foreman's office was "not accompanied by any demand that petitioner implicate himself". But here, the whole purpose of Dr. Helfand's activity was to get petitioner to implicate himself. And Helfand was very explicit in making this clear (see Petitioner's main brief, p. 18).

We fail to see the relevance of the quotation from *United States ex rel. Smith* v. *Baldi*, 96 F. Supp. 100, 103 (Brief, p. 61). For here we maintain that the record requires this Court to find that the state "in its prosecution departed from the constitutional requirements".

5. There is no basis for the contention (pp. 61-65) that the conviction can stand even if the Meenahan confession should have been excluded. Respondent's reliance on *Stein* v. *New York*, supra, as authority (p. 62) rests on a misconception of that case. But before discussing this, we must emphatically repudiate the suggestion (p. 61) that we have "in effect" conceded the freedom from taint of the confession made to the assistant prosecutors merely because we emphasized the obvious taint of the statements to Meenahan.

Moreover, the confession petitioner made to the prosecutors was not nearly so specific as the statements he made to Meenahan. For the police captain testified that petitioner told him that when he picked up the hammer his mother asked him what he was going to do with it and he said "I am going to hit him over the big skull when he comes back—this is going to end for once and for all" (941). No such statement was made to the prosecutors. To them he said only that he told his mother "not to worry" and that he didn't remember the details (1219). Absent the Meenahan testimony, therefore, the jury may well not have found petitioner guilty of first degree murder.

The *Stein* case is no authority for respondent here, because this Court held that the challenged confession had been properly received. It did not suggest that a conviction could be sustained if, in any part, it rested on a confession

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obtained in violation of a defendant's constitutional rights —nor intimate that earlier cases, such as *Stroble* v. *California,* supra, and *Brown* v. *Allen,* 344 U. S. 443, 475, were being overruled in that respect. The part of this Court's opinion quoted by respondent (pp. 62, 63) dealt only with the contention made in that case that a new trial should have been granted because the jury might have concluded the confession coerced and yet convicted on the basis of other evidence. No such contention is made here. Thus that case does not support respondent's contention (p. 63) that despite the inadmissibility of the Meenahan confession petitioner's conviction could be upheld.

6. In an effort to escape the force of the rule declared in *Strasberg* v. *Equitable Life Ass. Soc.,* 281 App. Div. 9, respondent (pp. 68 ff) seeks to build up a "volume" of testimony to form the basis of the expert's conclusions. But, on analysis, that "volume" has no bearing at all on the vital issue of carry-over. Besides, none of it was in dispute. Nor did it leave any room for inferences. Clearly that is so with reference to the issue of inducement. For there can be no answer to the proposition that the only way the effect of a promise of leniency can be obviated is by its withdrawal. And there was none here.

7. In closing we wish to remind the Court that it has frequently stressed the fact that the use of involuntary confessions is considered a denial of due process not only because such confessions are often false, but also because, as Mr. Justice Frankfurter said, speaking for a unanimous Court in *Rochin* v. *California,* 342 U. S. 165, at 173, they "offend the community's sense of fair play and decency".

Mr. Justice Roberts had thus laid down the rule in *Lisenba* v. *California,* supra, at 236:

> "The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether

> true or false. The criteria for decision of that question may differ from those appertaining to the State's rule as to the admissibility of a confession."

These observations are even more pertinent when the confession is obtained, as here the trial court found, by a promise not to prosecute for first degree murder. For to accept the confession and reject the promise constitutes a breach of faith on the part of the prosecuting authorities which we feel confident this Court will never sanction. That would, indeed, "work that fundamental unfairness which is at war with due process" (*Lisenba* v. *California*, supra, at p. 238).

CONCLUSION

It is respectfully submitted that respondent's brief wholly fails to meet the fundamental issues in this case and that the judgment under review should be reversed.

Respectfully submitted,

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